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Minutes of proceedings of the Conference of the Drafting Committee with Premiers of Provinces & certain States, etc. held on the 21st July 1949.

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NATIONAL ARCHIVES OF INDIA

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Minutes of proceedings of the Conference with the Premiers of Provinces etc. held on the 21st July, 1949.

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The Drafting Committee met the Premiers of the Provinces and of certain Indian States, the members of the Union Powers Committee and also certain Ministers of the Government of India on the 21st July, 1949, and discussed with them the various amendments suggested in the Seventh Schedule to the Draft Constitution.

The list of amendments proposed by the various Ministries of the Government of India was taken up for consideration. The results of the discussions are stated below :-

UNION LIST.

Entry 7: The revised entry proposed for substitution for the existing entry by the Ministry of Law was generally accepted. The Premiers of Bombay and C.P. objected to the insertion of the reference to the control of rents in the revised entry but the Premier of East Punjab supported the retention of this reference.

Entry 26: The new entry 26 proposed for substitution for this entry by the Ministry of Law was accepted.

Entry 37: The amendment suggested in entry 37 by the Ministry of Law was accepted.

Entry 38: The new entry proposed for substitution for this entry by the Ministry of Law was accepted but it was suggested that the expression "railways" should be so defined so as to exclude "tramways and minor railways operated for the carriage of goods to and from factories".

Entry 39....

NATIONAL ARCHIVES OF INDIA

(3)

Entry 39: The new entry 39 proposed for substitution for this entry by the Education Ministry was accepted subject to the omission of the words "or under" therefrom.

Entry 40: The new entry 40 proposed for substitution for this entry by the Education Ministry was also accepted subject to the omission of the words "or under" therefrom.

New entry 40A: The new entry 40A proposed for insertion after entry 40 by the Education Ministry was accepted.

Entry 41: The amendment suggested by the Education Ministry in this entry was accepted.

Entry 57: The amendment suggested in this entry by the Ministry of Labour was accepted.

New entry 57-A: It was suggested that the new entry 57-A proposed for substitution for this entry by the Ministry of Education should be revised as follows :-

"57-A. Co-ordination and maintenance of standards of Higher educational, scientific and technical institutions."

Entry 60: The amendment suggested by the Ministry of Education in this entry was accepted but it was suggested by the Premier of U.P. that the item "archaeological sites and remains" should be transferred from the Union List to the Concurrent List and this was agreed to. It was also agreed that the new entry 10A with regard to the "Ancient and historical monuments" should be inserted in the State List as proposed in amendment No. 3594 of which notice has been given by the Drafting Committee.

Entry 61: It was suggested that the new entry proposed for substitution for this entry should be

inserted as.....

NATIONAL ARCHIVES OF INDIA

inserted as an additional entry 61-A and should not be substituted for the existing entry 61, and that the new entry to be so inserted should be revised as follows :-

"61-A. Establishment of standards of quality for goods to be exported across customs frontier or transported from one State to another."

Entry 63: The new entry 63 proposed for substitution for this entry by the Ministry of Works, Mines and Power was accepted.

Entry 64: The new entry 64 proposed for substitution for this entry by the Ministry of Industry and Supply was accepted.

New entry 64A: It was agreed that the new entry 64-A proposed for insertion after entry 64 by the Ministry of Industry and Supply should be transferred to the Concurrent List subject to necessary drafting changes.

Entry 66: The amendment suggested in this entry by the Ministry of Works, Mines and Power was accepted.

Entry 74: The new entry 74 proposed for substitution for this entry by the Ministry of Works, Mines and Power was also accepted.

Entry 83: The amendment suggested in this entry by the Ministry of Finance was agreed to.

STATE LIST.

Entry 15: The transfer to List III of the subject "Public Health and Sanitation" was objected to by the Premiers of Bombay, U.P., Assam, and Bihar. The transfer of "Vital statistics including registration of births and deaths" to List III was accepted.

Entry 18: The form of the amendment proposed by the Ministry of Labour in this entry was left to be settled by the Drafting Committee.

Entry 19.....

NATIONAL ARCHIVES OF INDIA

Entry 19: The amendment proposed in this entry by the Ministry of Law is consequential on the amendment proposed in entry 38 of the Union List. Its form will depend on the manner in which the expression "railway" is defined.

Entries 27 & 29: The suggestion of the Ministry of Agriculture for amendment of these entries was not agreed to.

Entry 38: It was agreed that this entry should be revised as shown below and then transferred to the Concurrent List :-

"Adulteration of foodstuffs and drugs".

CONCURRENT LIST

Entry 17A: The amendment of the Labour Ministry to insert this entry which was only consequential was accepted.

New entries 20A, 31A & 31B: The amendments to insert these entries were considered unnecessary in view of the decisions already taken.

Entry 32: The transfer of this entry to the Union List was agreed to.

Entry 34: The amendment proposed by the Health Ministry in this entry was considered unnecessary.

New entries 34A and 35A: The insertion of these two new entries proposed by the Ministries of Health and Agriculture was not agreed to.

Entry 39: In view of the decision to retain entry 61 of List I without any alteration, the amendment proposed by the Ministry of Law for the omission of this entry from the State List was considered unnecessary.

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NATIONAL ARCHIVES OF INDIA

(6)

The consideration of the amendments proposed in entry 86 of the Union List and entry 52 of the State List by the Ministry of Law was held over for being taken up along with the consideration of the amendments to entries relating to taxation in the Union and the State Lists.

The consideration of the amendments proposed by the Ministry of Home Affairs was postponed until the 23rd July.

The consideration of the amendment proposed by the Ministry of Health in entry 37 of the Concurrent List was also postponed.

New Delhi,
21st July, 1949.

S.N.MUKERJEE
JOINT SECRETARY.

B/25/7.

NATIONAL ARCHIVES OF INDIA

(7)

CONSTITUENT ASSEMBLY OF INDIA.

Minutes of the proceedings of the Conference with the Premiers and Finance Ministers of the Provinces, etc. held on the 22nd July, 1949.

The Drafting Committee met the Premiers and Finance Ministers of the Provinces and of certain Indian States and also certain Ministers of the Government of India at 10 A.M. on 22nd July, 1949 in the Constitution Hall and discussed with them the financial provisions in the Draft Constitution. The Hon'ble the President and the Hon'ble the Prime Minister were also present.

The Committee first took into consideration articles 210 and 211 of the Draft Constitution relating to Auditors-in-Chief for the States, and it was agreed that these provisions should be deleted.

The provisions in Chapters I and II of Part X of the Draft Constitution were then considered article by article.

Article 247: The suggestion of the Finance Minister of Bombay that a definition of "prescribed should be inserted in this article was not agreed to as this word having been defined wherever it occurred a general definition was considered unnecessary.

Article 248: The substitution of two new articles - one providing for authority for the imposition of any tax and the other defining Consolidated Funds of India and of the States - was agreed to.

The amendment proposed by Pandit H.N. Kunzru for the insertion of a new article 248-B providing for the establishment of Contingency Funds for India and for the States was also

P.T.O.

NATIONAL ARCHIVES OF INDIA

accepted. Some of the Premiers present doubted the necessity for such a provision. It was explained that the provision for the creation of a contingency fund had been proposed as it would enable the Executive to meet unforeseen expenditure pending the authorisation of such expenditure by Parliament or the Legislature of the State by law. It was also pointed out that this was an enabling provision and it would be open to any State not to create such a fund if it did not consider it necessary to do so.

Article 249: It was agreed that clause (1) of this article should be revised so as to insert to words "as are imposed under any law made by Parliament" after the words "Such stamp duties".

Article 250: The question as to whether sub-clause (d) of clause (1) of article 250 relating to taxes on railway fares and freights should be deleted as proposed by the Ministry of Finance, Government of India, was considered at some length. The Premier of U.P. was not in favour of the deletion of this sub-clause as he thought that it would deprive the Provinces of a potential source of revenue. The Chairman of the Drafting Committee agreed to look into this matter further.

It was agreed that in sub-clause (c) of clause (1) of this article, after the word "rail" the word "sea" should be inserted.

Article 251: Before taking up the consideration of this article, the Chairman drew attention to certain amendments of which notice had been given by Shri T.T. Krishnamachari raising a fundamental issue as to whether a distinction should be made between income from agricultural land and income from other sources for the purposes of income tax. This amendment did not find favour with any of the

NATIONAL ARCHIVES OF INDIA

(9)

Provincial Ministers.

The consideration of article 251 was then taken up. A suggestion was made that provision should be inserted in the Constitution fixing a definite percentage of the net proceeds of income tax to be distributed among the States. The Finance Minister of Madras desired that corporation tax should also be included in the divisible pool. The Hon'ble Shri K.C. Neogi was opposed to both these suggestions. He said that it would be wrong to fix a definite proportion in the Constitution as it was intended that the proportion should be fixed after consultation with the Finance Commission to be set up at the expiration of five years from the date of commencement of the Constitution. He, however, added that the Government of India was contemplating to set up an authority immediately for the purpose of fixing the proportion in which the proceeds should be shared between the Centre and the Provinces without waiting for the first quinquennial period for the appointment of the Finance Commission. He further added that the corporation tax was never intended to be shared between the Centre and the Provinces under the Government of India Act, 1935, and that the existing position should be continued.

The Premier of West Bengal complained that the share of West Bengal in the net proceeds of income tax had been reduced during the last two years. The Premier of U.P., however, was of opinion that the percentage to be distributed among the Provinces over which there was a good deal of controversy should not be specified in the Constitution. The Hon'ble the Prime Minister said that it was desirable to have an Expert Committee to go into the whole

P.T.O.

NATIONAL ARCHIVES OF INDIA

question and that it should be appointed immediately. The Hon'ble Shri K.C. Neogi pointed out that the integration of the Indian States had changed the position considerably and this also had to be examined thoroughly.

The Premier of U.P. agreed that a Commission of the kind proposed might be appointed but suggested that in the mean time the States should have fifty percent of the income tax and also the corporation tax. He was of opinion that it would not be possible for any Commission to report on the entire question of income tax distribution within a year or two and it might take about four or five years.

The Premier of Orissa suggested the setting apart of five per cent of the net proceeds of income tax by statutory provision for the formation of a development fund to be administered by the Centre for the general development of the country. The Chairman said that the suggestion would be noted.

The Premier of C.P. and the Finance Minister of Madras complained that their Provinces too had not been fairly treated.

The Premier of East Punjab said that the distribution should not be on the basis of population but on the basis of the needs of the Provinces, and pleaded for special consideration for East Punjab.

The Chairman observed that the discussion could not carry them to any definite conclusion and that the Finance Ministry would take note of the suggestions made.

Article 252: This article was agreed to.

Article 253: The Hon'ble Shri K.C. Neogi suggested that clause (1) of this article should

(11)

be deleted as there should be no embargo on the authority of Parliament to impose duties on salt.

The Hon'ble the Prime Minister said that as the clause stood it had only meant that the country was being dumped with foreign salt, and he considered that there was no point in making this clause a part of the Constitution.

The question whether provision for the distribution of the proceeds of the export duties among the States by law should be included in clause (2) of this article was then taken into consideration.

The Hon'ble Shri K.C. Neogy stated that the States should not have any share of the proceeds of the export duties and that no provision should be included in clause (2) of article 253 with regard to the distribution of export duties.

The Premier of U.P. and the Finance Minister of Madras wanted the continuance existing position under the Government of India Act, 1935, whereby export duties could be distributed among the Provinces by law.

The Premier of Assam desired that the export duties should be made available for distribution to the Provinces, particularly to those Provinces which produce the articles exported, such as tea.

The Hon'ble Shri K.C. Neogy pointed out that this might be a legitimate consideration for giving grants in aid but this did not necessarily constitute a valid claim to a share in the export duty.

P.T.O.

NATIONAL ARCHIVES OF INDIA

The Premier of Assam suggested that the words "if Parliament by law so provides" in clause (2) of article 253 should be replaced by an obligation on Parliament to provide for the distribution of the duties mentioned in that clause among the States. The Premier of West Bengal supported the suggestion of the Premier of Assam.

The Finance Minister of Madras suggested that tobacco should be deleted from the Central Excise Duties. The Chairman considered that the existing position should not be changed.

The Finance Minister of Assam wanted to know whether the question of sharing in the Excise Duty would also be referred to the Finance Commission. The Chairman thought that the Commission would examine the whole field of the obligation of the Centre, the obligation of the States and other resources.

The Chairman summing up the discussion on this article observed that the general consensus of opinion appeared to be in favour of the retention of article 253 omitting the provision relating to salt in clause (1) thereof.

Article 254: The Chairman suggested that the provisions in this article should be replaced by a new article providing for compensatory grants to those Provinces which were sharing in the export duty. The Finance Minister of Assam proposed that compensatory grant should be also given in respect of tea. The Chairman explained that this article dealt with compensation for injury to vested rights and that there was no vested interest in the case of tea. He further pointed out that the view of the Finance Ministry was that the system of dividing export duty was not sound.

NATIONAL ARCHIVES OF INDIA

Article 255: The Premier of Assam suggested that the words "the rest of the areas of that State" in the first proviso to this article should be replaced by the words "the rest of the areas of India". This was not agreed to. It was however agreed that in sub-clause (a) of the second proviso to this article, for the words "three years" the words "two years" should be substituted.

Article 256: The Hon'ble Shri K.C. Neogy suggested that the limit of two hundred and fifty rupees prescribed in clause (2) of this article should be reduced to one hundred rupees. The Premier of U.P. suggested that the maximum limit should be two hundred and fifty rupees or in the alternative a tax assessiable at a rate not exceeding one per cent of the income. Shri K.C. Neogy objected to this suggestion on the plea that it would amount to a second income tax. The Chairman pointed out that there existed nowhere in the world a system of taxation where the same common basis was shared between the Centre and the local authority though there might be some in which the State and the local authority shared the same common basis, and that he was therefore opposed to this proposal on principle.

Shri Alladi Krishnaswami Ayyar stated that under the guise of taxes on professions, trades, callings, etc. some Provinces practically have a different sort of income tax machinery though the real object of the provision was to have a sort of licence fee or tax for practising certain professions or callings. He said that some of the people, especially in Madras, were taxed under this head to the tune of about a thousand rupees, and that it was desirable that there should be uniformity in this matter among all the Provinces.

P.T.O.

NATIONAL ARCHIVES OF INDIA

The Premier of U.P. pressed that the maximum limit of two hundred and fifty rupees should not be reduced in any case.

The Premier of C.P. and the Finance Minister of Madras supported the Premier of U.P.

The Chairman said that he would examine whether the amount of two hundred and fifty rupees should be retained or the suggestion of the Finance Ministry to reduce the amount to one hundred rupees should be accepted.

Article 257: This article was agreed to.

Article 258: The consideration of this article was held over as the report of the States Finance Inquiry Committee was not ready.

Article 258A: The Finance Minister of Bombay drew attention to amendment No.2939 of the printed List of Amendments, Volume II, by Shri B.M. Gupte about the division of proceeds of residuary sources of taxes between the Union and States. The Chairman said that the question would be examined.

Article 259: This article was agreed to.

Article 260: The Chairman drew attention to amendment No.2943 of the printed List of Amendments, Volume II, of which notice had been given by the Drafting Committee seeking to substitute a new clause for clause (1) of the existing article. He pointed out that the only difference between the existing clause and the new clause was that under the existing clause the Finance Commission was to be appointed at the expiration of five years from the commencement of the Constitution, while under the new clause proposed it was to be appointed as

P.T.O.

NATIONAL ARCHIVES OF INDIA

(15)

soon as practicable but not later than the expiration of five years from the commencement of the Constitution.

The Premier of Orissa wanted to know if the Finance Commission would be a permanent body. The Chairman pointed out that it depended upon the amount of work the Commission would have. The Hon'ble Shri K.C. Neogy pointed out that the article as drafted would require the appointment to be made afresh every fifth year. The Premier of U.P. stated that the article did not contemplate continuity and that a Commission would be dissolved after it had completed its work. The Premier of Orissa pointed out that in Australia the Commission was a permanent body and that if the idea was to have that kind of Commission, the Finance Commission should be a permanent body and one of its functions should be to examine all applications for grants from the States. The Premier of U.P. thought that the idea of asking the Commission to examine every suggestion or request for assistance might lead to embarrassing complications. The Chairman pointed out that he was not prepared to commit himself to a permanent body. He however pointed out that the only question to be considered was whether the language of clause (1) of this article would permit the appointment of a permanent body or an ad hoc body.

Article 261: The Premier of U.P. stated that under this article as it had been drafted, the recommendations of the Finance Commission would not be published till the President had taken action

P.T.O.

NATIONAL ARCHIVES OF INDIA

on them and that they would not be discussed in Parliament. The Chairman pointed out that the action taken by the President might be modified by Parliament and that the power of Parliament to compel the Government to alter the action taken was inherent.

Article 262: The Chairman pointed out that this article embodied only the existing provision in section 150 of the Government of India Act, 1935. The article was agreed to.

Article 263: The Chairman stated that the article embodied the provision now contained in section 151 of the Government of India Act, 1935. He also stated that the article would be suitably amended so as to provide for the payment into the Consolidated Fund of suitors' moneys and similar deposits.

Articles 264, 264A, 265, 265A and 266: The consideration of these articles was postponed to the 24th July when the Hon'ble Dr. John Mathai, Finance Minister, was expected to participate in the deliberations on his return from the United Kingdom.

Article 267: The Chairman pointed out that this article was the same as section 156 of the Government of India Act, 1935, and it was agreed to.

Article 268: This article was also agreed to.

Article 269: A question was raised by the Hon'ble Shri K.C. Neogy as to whether a State could borrow from outside India without the consent of the Government of India. The Chairman said that it could not.

NATIONAL ARCHIVES OF INDIA

(17)

Shri T.T. Krishnamachari said that it might in some cases be possible for a Province to offer better terms for raising loans from abroad than for the Centre and so it might be desirable to provide something on the lines of section 163(3) of the Government of India Act, 1935.

The Hon'ble the Prime Minister said that it was highly desirable to allow Provinces to borrow directly from abroad but with the consent of the Centre. The Premier of C.P. inquired what would happen if the Centre refused to give the consent. The Premier of East Punjab felt that the Centre would always be in a better position to borrow from outside than any State and that the borrowing of money by a State from outside might affect the foreign policy of the whole country.

The Chairman said that under the Government of India Act, 1935, it was permissible for the Provincial Governments to borrow from outside India provided the Dominion consented. Under the new Constitution, it was proposed not to leave the situation as it was under that Act and accordingly an entry "foreign loans" had been inserted in the Union List, vide entry 18, and he thought that it would be competent for Parliament while exercising power under this entry to make provision that a State could borrow outside India only with the consent of the Union.

It was agreed that if there was any difference of opinion between the Union and the States, the opinion of the Union should prevail and there should be no provision for arbitration.

It was also agreed that the conditions to be imposed under clause (2) of this article should be imposed by or under any law made by Parliament and that suitable modifications should be made in that clause for the purpose.

P.T.O.

NATIONAL ARCHIVES OF INDIA

The Premier of Orissa drew attention to section 141 of the Government of India Act, 1935, and suggested that provision similar to that contained in that section should be included in the Draft Constitution. The Premier of U.P. agreed that there should be such a provision. The Chairman undertook to examine this suggestion.

The consideration of the entries relating to taxes in the Union List and in the State List was then taken up.

Union List.

The Hon'ble Shri K.C. Neogy suggested that the mention of non-narcotic drugs should be omitted both from entry 86 of the Union List and entry 52 of the State List, the intention being that in so far as excise duties are leviable in the case of pharmaceutical preparations these duties should be levied by Central legislation, but under article 249 the proceeds of such duties would be made over to the Provinces. He stated that in the interest of the pharmaceutical industry uniform excise duty should be leviable throughout the States and for this purpose it was desirable that the Centre should be authorised to levy the duty.

The Premier of U.P. wished that both these entries should be left unaltered as they gave power to the Centre to levy excise duty on medicinal preparations containing narcotic drugs. The Hon'ble Shri K.C. Neogy pointed out that there might be cases of non-narcotic drugs other than medicinal preparations and he did not want the States to impose excise duty on non-narcotic drugs and that was why he wanted the omission of the words "non-narcotic drugs" from entry 86 of the Union List and entry 52 of the State List. He said that the term "non-narcotic drugs" went far beyond medicinal preparations.

NATIONAL ARCHIVES OF INDIA

(19)

(18

The Constitutional Adviser suggested that there was some ambiguity in the existing entries in question. He said that it was difficult to define non-narcotic drugs. He pointed out that Aspirin was composed of three or four chemical substances each of which could be regarded as a non-narcotic drug, but on the other hand Aspirin could be regarded also as a non-narcotic drug compounded of three or four other non-narcotic drugs, and that the question would then arise as to whether Aspirin would come under non-narcotic drug as mentioned in paragraph (b) of entry 86 of the Union List or it would come under medicinal preparations. He suggested that either non-narcotic drugs should be omitted from both these entries or "non-narcotic drugs" should be placed in a separate paragraph (c) in both these entries, and that in the latter case, medicinal preparations referred to in the entries would be limited to medicinal preparations containing alcohol and any substance included in paragraph (b).

The Hon'ble Shri K.C. Neogy suggested that "non-narcotic drugs" should be dropped from both the entries. But the Premier of U.P. was doubtful if the omission proposed would not create further difficulties. He was however willing to leave the decision to the Drafting Committee.

The Hon'ble Shri K.C. Neogy raised the question of amendment of entry 20 of the Concurrent List by the substitution of the words "drugs including poisons" for the words "poisons and dangerous drugs" in that entry. The Chairman pointed out that this suggestion would involve consequential changes in entry 40 of the State List. As there was no representative of the Health Ministry

P.T.O.

NATIONAL ARCHIVES OF INDIA

present at the Conference, the consideration of this matter was postponed.

Entry 79. The Finance Minister of Bombay suggested that entry 79 of the Union List relating to "Stock Exchanges and futures market" should be transferred to the Concurrent List. The Premier of U.P. suggested that "futures market" should be transferred to the State List. The Premier of Bombay said that Stock Exchanges would include "futures market". Shri K.M. Munshi pointed out that though the transactions were carried out in a particular place, the operators are spread over the whole of India, and that therefore the entry should be in the Union List. After some discussion it was decided to postpone consideration of this question to the 24th July when the Hon'ble Dr. John Matthai would be present.

Entry 83. It was agreed that the word "sea" should be inserted after the words "carried by railway" in entry 83 of the Union List.

Entry 88. Shri T.T.Krishnamachari drew attention to entry 88 of the Union List and pointed out that there was no corresponding entry regarding the agricultural land in the State List. The Premier of West Bengal pointed out that entry 53 of the State List would cover that matter.

State List.

Entry 50. The Finance Minister of Madras suggested that entry 50 of the State List should be amended to include therein a reference to taxes on passengers and goods carried by road transport so as to enable a State to levy a surcharge on the fares of buses run by private companies. His attention was drawn to entry 63 of the State List relating to tolls but he said that that entry would enable the imposition of tax on vehicles and not on passengers carried by vehicles. The Chairman agreed to consider this question.

NATIONAL ARCHIVES OF INDIA

(21)

Entry 58. The consideration of entry 58 of the State List was held over.

All other entries relating to taxes in the Union and the State Lists were agreed to.

Composition of Legislative Councils in States.

The consideration of the new article relating to the composition of Legislative Councils in the States was then taken up. The Premier of U.P. wanted to know whether the principle of having second Chambers had been agreed to as that was necessary before their composition could be discussed. Shri K.M. Munshi pointed out that the Assembly had already adopted article 148 and had thereby agreed to the principle of having second Chambers in certain States. The question for consideration was whether the composition of the Chamber should be left to be determined by Parliament or should be provided for in the Constitution itself. In the latter case the amendments proposed by the Premier of U.P. (Nos. 139 and 140 of the Consolidated List of Amendments dated the 10th July, 1949) might be considered.

The Hon'ble the Prime Minister stated that as there was considerable confusion due to so many points of view being put forward and as no one was able to make up his mind, it was felt that it had better be left to Parliament to determine the composition instead of putting it in the Constitution. The Premier of U.P. said that if it was to be decided by the Constituent Assembly functioning as provisional Parliament there would not be any difficulty, but if it was to be left to be determined by the future Parliament chosen on the basis of adult franchise then there might be

P.T.O.

NATIONAL ARCHIVES OF INDIA

(22)

considerable difficulties. He further stated that the important question as to whether there should be a provision for a joint session of the two Houses had to be also decided. He said that he was against such joint sittings and that in his view, in the event of a conflict between the two Houses, the opinion of the Lower House should prevail. He stated that if his suggestion was agreed to, then it did not matter what the composition of the second Chamber was.

The suggestion of the Premier of U.P. was agreed to and it was decided to make necessary amendments in article 172 of the draft constitution. It was also decided that the composition of the Legislative Council of States should be left to be determined by Parliament by law and the amendment No. 136 of the consolidated list of Amendments, dated the 10th July 1949, proposed by the Drafting Committee was agreed to.

The new article 148A proposed by the Drafting Committee providing for the abolition or creation of Legislative Councils in States (amendment No.119 of the Consolidated List of Amendments, dated the 10th July 1949) was also agreed to.

The Premiers of Assam and Orissa proposed that there should not be any provision in the Constitution which would enable the Legislative Assembly of any State having no Legislative Council at the date of commencement of this Constitution to recommend the creation of such a Council.

The Hon'ble the Prime Minister said that they could not in that way bind the future as it was just possible that those coming after might like to have a second Chamber. The Chairman also agreed that they could not in that manner bind the future. Shri T.T.Krishnamachari pointed out that just as there would be a provision for the abolition of the second Chamber where it existed, so also there should be a provision for the creation of a second Chamber where it did not exist.

NATIONAL ARCHIVES OF INDIA

Minutes of the proceedings of the conference with the Premiers of the Provinces, etc., held on the 23rd July, 1949.

(22)

The Drafting Committee met the Premiers of the Provinces and of certain Indian States and also certain Ministers of the Government of India at 10 a.m. on the 23rd July, 1949, in the Constitution Hall and discussed with them the provisions in the Draft Constitution relating to scheduled tribes and Scheduled Castes.

The question whether the scheduled tribes should be defined in article 303(1)(x) of the Draft Constitution so as to include only tribes professing tribal religion as proposed in amendment No. 3237 (Vol. II of the printed List of Amendments), the notice of which has been given by Shri A.V.Thakkar, was taken up for consideration. The Premier of C.P. and the Revenue Minister of Bihar supported this amendment. It was decided that a provision should be included in the Constitution which would enable Parliament, by law, or the President, by order, to determine the class of persons who should be treated in relation to each State as scheduled tribes for the purposes of the Constitution.

The question as to the modification of the list of scheduled tribes in the Eighth Schedule to the Draft Constitution was then taken up. After discussion it was decided that the Eighth Schedule should be omitted from the Draft Constitution and power should be conferred on the President to specify by order the tribes which will be classified as scheduled tribes in relation to each State and also so as to enable him to amend from time to time such order by the inclusion in or exclusion from the list of scheduled tribes any tribe.

A similar decision was also taken with regard to the enumeration of castes, races or tribes which will be treated as Scheduled Castes for the purposes of the Constitution.

The question was also raised whether the Fifth and the Sixth Schedules should be retained as part of the Constitution or it

(P.T.O.)

NATIONAL ARCHIVES OF INDIA

should be left to Parliament to make provisions by law as to the administration and control of scheduled areas and scheduled tribes in States other than Assam and the administration of the tribal areas in Assam. After discussion it was left to the Drafting Committee to examine this question.

Mr. Munshi drew attention to that part of amendment No. 3236 (Vol. II of the printed List of Amendments), the notice of which has been given by the Drafting Committee, whereby it has been proposed that a person who belongs to a Scheduled Caste in a State shall be deemed to be a Scheduled Caste not only in that State but throughout the territory of India, and pointed out that this would mean creating a separate community of the Scheduled Castes. The Chairman replied that it was necessary to bring this amendment to enable a member of the Scheduled Castes in one State to offer himself as a candidate for a seat reserved for Scheduled Castes in the Legislature of another State. The further consideration of this question was left to the Drafting Committee. The conference then adjourned till 3.30 in the afternoon.

The conference met at 3.30 p.m. at the residence of the Hon'ble Sardar Patel.

The amendments proposed by the Ministry of Home Affairs in the Seventh Schedule to the Draft Constitution were first taken up for consideration. The results of the discussions are as stated below:-

UNION LIST.

Entry 2. It was decided to redraft this entry as follows:-

"2. Central Bureau of Intelligence and Investigation."

Entry 3. The amendment suggested in this entry by the Ministry of Home Affairs was accepted.

Entry 4. It was decided that this entry should be suitably modified to include therein a reference to the maintenance by the Government of India of Armed Police Force or other similar forces on the lines of the provision contained

NATIONAL ARCHIVES OF INDIA

(23)

in entry 1 of List I of the Seventh Schedule to the Government of India Act, 1935, as originally enacted.

Entries 52, 57 and 58. The amendments suggested by the Ministry of Home Affairs in these entries were agreed to. It was further decided that in entry 57, for the word "institutes" the words "Union institutes" should be substituted.

STATE LIST.

Entry 1. The proposal of the Ministry of Home Affairs to transfer the item "preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention" to the Concurrent List was agreed to but it was suggested by the Premier of U.P. that the new entry to be inserted in the Concurrent List should read as follows:-

> "preventive detention for reasons connected with the stability of the Government established by law and the maintenance of public order and services or supplies essential to the life of the community; persons subjected to such detention."

The Drafting Committee agreed to consider this suggestion.

Entry 2. The amendment suggested by the Ministry of Home Affairs in this entry was accepted as being consequential on the inclusion of the reference to High Court in entry 52 of the Union List.

CONCURRENT LIST.

New Entry 2A. The insertion of this new entry was agreed to subject to the modification suggested by the Premier of U.P. referred to above.

Entry 3. The new entry proposed for substitution for this entry was also agreed to.

Entry 33. The omission of this entry which is consequential was also agreed to.

The consideration of articles 188 and 278 containing emergency provisions in case of failure of constitutional machinery in the States was then taken up. The Chairman drew attention of the Premiers and other Ministers present at the conference to the redraft of article 188 suggested by the Ministry of Home Affairs.

(P.T.O.)

NATIONAL ARCHIVES OF INDIA

26

The Prmier of U.P. was of the view that the Governor should not exercise any of the functions vested in him by the Proclamation in his discretion but should be subject to the superintendence, direction and control of the President.

(contd.) .....

NATIONAL ARCHIVES OF INDIA

(22)

The next question discussed was as to the authority that should exercise the powers vested in the Legislature of the State on the supersession of such Legislature. Mr. T.T. Krishnamachari maintained that the legislative power should be vested in Parliament as in article 278 of the Draft Constitution instead of in the Governor. Shri Alladi Krishnaswami Ayyar, however, considered this to be an unworkable proposition as Parliament would then be overburdened with the legislative work in relation to such State.

After some discussions it was left to the Drafting Committee to produce an acceptable draft in consultation with the Ministry of Home Affairs.

Article 24 of the Draft Constitution dealing with the rights to property was next considered. At the outset the Chairman proposed for consideration the adoption of the Australian model and suggested that an entry might be included in the Legislative Lists on the lines of clause (xxxi) of section 51 of the Australian Constitution which runs as follows:-

> "(xxxi) The acquisition of property on just terms from any state or person in respect of which the Parliament has power to make laws."

Shri Alladi Krishnaswami Ayyar said that if the suggestion was accepted, it would still be permissible for courts to enquire as to whether the terms of acquisition were just or not. The Premier of U.P. proposed that the following two new clauses should be inserted after clause (2) of article 24:-

> "(2a) The payment of compensation referrred to in clause (2) of this article may be in cash or in securities or bonds or partly in cash and partly in securities.
>
> (2b) No law making provision as aforesaid shall be called in question in any court."

~~P.T.O.~~

NATIONAL ARCHIVES OF INDIA

(28)

Shri Alladi Krishnaswami Ayyar pointed out that if the amendment proposed by the Premier of U.P. was accepted, then article 24 might as well be omitted from the List of Fundamental Rights.

The Chairman of the Drafting Committee thought that a distinction should be made between the amount of compensation and the form in which compensation would be paid. He added that it would be perfectly legitimate to say that the manner in which compensation would be paid should be left to the jurisdiction of the Legislature and no court should be entitled to question that. He, however, thought that the difficulties could be avoided by putting the item in the Legislative Lists by borrowing word for word the text of the Australian Constitution and omitting article 24 from the part relating to Fundamental Rights. The Premier of Assam suggested that the words "taken possession of" in clause (2) of article 24 should be omitted as otherwise their development activities would be seriously affected.

The Hon'ble Shri Gopalaswami Ayyangar suggested the following alternative:-

> "No person shall be deprived of his property save by authority of law or without compensation, the amount and form of which shall be in accordance with law."

Shri Munshi thought that while the suggestion of the Hon'ble Shri Gopalaswami Ayyangar would improve the draft, it did not meet the point of substance. He suggested that the zamindari should be exempted specifically and no exemption should be provided for any other property.

The Constitutional Adviser suggested the insertion of the following new clause after clause (2) of article 24:-

> "(2a) The amount of compensation which is to be paid or the principles on which and the manner in which compensation is to be determined as fixed or specified

NATIONAL ARCHIVES OF INDIA

(29)

in any such law as aforesaid shall, if the law so provides, be final and shall not be called in question in any court."

It was suggested that a satisfactory formula might be to retain only clause (1) of article 24 with the addition of the words "~~of~~ and without payment of compensation" and to utilise entry 35 in the Concurrent List to prescribe the mode and manner of payment of compensation.

After some discussion, the final draft of the article was left to be settled by the Drafting Committee.

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NATIONAL ARCHIVES OF INDIA

30

Minutes of the proceedings of the conference with the Premiers of the Provinces, etc.held on the 24th July, 1949.

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The Drafting Committee met the Provincial Premiers and Finance Ministers at a Conference held at 10 a.m. on Sunday, the 24th July, 1949.

The Hon'ble the President of the Constituent Assembly, the Hon'ble the Prime Minister and the Hon'ble the Finance Minister were also present.

The Committee took up the consideration of articles 264, 264A, 265 and 265A and 266, the consideration of which was held over on the 22nd July, 1949.

Article 264: The Premier of the United Provinces objected to the proviso to this article on the ground that it would debar a municipality from imposing any new tax hereafter. After a further exchange of views, the Chairman summed up the position by saying that there was general agreement that property of the Union should not be liable to any tax provided that 'property' did not cover business. He stated that certain municipalities were being permitted to tax the property of the Centre and that this would continue until Parliament provided otherwise. He also stated that only question left over for consideration was about a new tax which a municipality might hereafter impose. He thought that Parliament would decide the question in the same manner as it had done in the case of railway property.

New article 264A: The consideration of the new article 264A relating to sales tax proposed by the Ministry of Finance as shown in Appendix A to these minutes was then taken up. The Hon'ble the Finance Minister, Dr.John Matthai said that the Government of India had been considering the proposals containing the new article for some time past in consultation with the Provincial Governments. There was a conference of Provincial Finance Ministers and it had been

(PTO)

NATIONAL ARCHIVES OF INDIA

30)

31

agreed at that conference that sales tax should be the exclusive right of the provinces. The only question which was for consideration was whether this right to levy sales tax should be as absolute as it had been in the past or some limitation ought to be imposed. Though there was some conflict of opinion over this question, the Government of India came to the conslusion that the Provincial Governments should levy this tax in such a way as not to conflict with the policy of the Central Government with regard to business and Industrial matters. He, however, observed that when the budgets of this year were produced, it was evident that there was conflict and overlapping and so the Government of India thought that the matter should be examined further. He said that in proposing this amendment he had taken into account the consideration that Provincial Governments needed this source of tax to meet their growing expenditure and that his aim was only to impose the minimum amount of restrictions to safeguard firstly the policy of the Central Government in regard to industrial development and secondly to see that there was a certain amount of uniformity between the provinces in regard to thes imposition of this tax. He also added that the new article 264A as put forward before the conference provided the minimum that would be necessary by way of restrictions if these two objectives were to be satisfied.

The Premier of Orissa and Shri Bishwanath Das both suggested that the tax should be collected by the Centre and distributed among the Provinces on some basis. This would avoid all the difficulties. The Finance Minister stated that there was a considerable volume of objection to such a proposal and that it had accordingly been given up.

The Premier of the Central Provinces and Berar pointed out that by selling the goods manufactured in the Central Provinces through depots opened in Calcutta his province was being deprived of the right to levy any sales tax on such sales.

NATIONAL ARCHIVES OF INDIA

(32)

The Finance Minister pointed out that if the Central Provinces Premier wanted firms selling such goods to pay sales tax in the Central Provinces it would be wholly against the very principle of sales tax being a tax on consumption. He further stated that actually a province like C.P. would stand to gain on the whole by the present system of sales tax levy because goods which were produced in the industrially advanced Provinces would come into C.P. for consumption and would become subject to sales tax there.

The Finance Minister of Bombay observed that the provisions contained in the revised article were rather controversial and that they might affect the provisions of the Draft Constitution relating to freedom of communication, trade etc., between the Provinces and accordingly suggested that it might be left for examination by some sort of Commission or conference between the provinces.

The Chairman pointed out that the amendment proposed was intended to prevent the provisions of article 16 of the Constitution relating to freedom of trade between the States, being circumvented by the Provinces and thereby to minimise litigation.

Sir Alladi Krishnaswami Ayyar also thought that it would have been far better to make sales tax a Central tax but that being not possible would accept the next best, that is to leave this power with the Provinces and provide safeguards against its misuse. The specific power, he said, was confined to sales tax within the province or unit and the word "sales" had a definite legal connotation. It was only when the property in the goods passed within the limits of the Province could there be any sale within the Province. It was not possible to avoid the goods being in one place and the sale of these goods being effected in another place. What was subject to provincial power under this particular item was not the property in the

PTO..

NATIONAL ARCHIVES OF INDIA

goods but its sale transaction. It was not open, he observed, to Provinces to expand the definition of the "sale" artificially. That was beyond their power.

The Chairman agreed that this was a very vital matter for all the Provinces and the Centre. The Centre had no desire to encroach on the proceeds of sales tax. All that was aimed at was to avoid conflict with article 16. He further suggested that Provincial Premiers present at the Conference should nbe requested to send exact amendments putting in the exact words that they would like to be introduced in this new article 264A and on receipt of such amendments the Drafting Committee would in consultation with the Finance Ministry reconsider the matter. It would not be open to any Province to say that the entire provision should not be there. We on our part, the Chairman observed, would be prepared to make it as far as possible acceptable to all the Provinces. The Hon'ble the Finance Minister Dr. John Matthai agreed with this suggestion of the Chairman of the Drafting Committee and also suggested that the alternative of leaving such restrictions to be imposed by Parliamentary Legislation might also be considered.

Shri K.M.Munshi referred to taxes on newspaper advertisements and said that power to tax should be left to Parliament as it was only proper that there should be a uniform tax throughout the country. All the Premiers of Provinces were opposed to this suggestion and the matter was not pursued further.

Article 265: This article was agreed to without much discussion.

Article 265A: The consideration of the new article 265A, proposed by the Ministry of Works, Mines & Power as shown in Appendix B to these minutes was then taken up.

PTO....

NATIONAL ARCHIVES OF INDIA

(54)

The Hon'ble Mr. N.V.Gadgil, Minister for Works, Mines & Power referred to the case of the Damodar Valley Corporation and stated that there were three governments - the Central Government, the Government of Bihar and the Government of West Bengal who were to share the profits as well as the losses. If the Bihar Government were to impose a sales tax on the consumption of electricity and the Government of the West Bengal were to impose a similar tax on the sale of water, the Central Government would be helpless and might incur a considerable loss. The purpose of this amendment was only to avoid any such loss to the Central Government.

The Chairman felt that as such activities would be spread over to two or three States, it would not be right to leave the power of taxation with the States as that might mean double taxation or different scales of taxation with the result that the Corporation might be placed in a very embarrassing position. He accordingly thought that taxation must be made subject to law made by Parliament. The Hon'ble the Prime Minister suggested that instead of burdening the Constitution with all these details, power should be given to Parliament to deal with such matters and that apart from the entry in this list, there might be an article in the Constitution giving power to Parliament to deal with such matters. At the suggestion of Hon'ble Shri Gadgil further consideration of this matter was left to the Drafting Committee.

Article 266: The new article proposed for substitution for the existing article 266 by the Finance Ministry as shown in Appendix C to these minutes was then taken into consideration. At the outset the Premier of the United Provinces suggested that the article might be omitted. The Hon'ble the Finance Minister Dr. John Matthai however pointed out that the matter required a little more

(PTO)

NATIONAL ARCHIVES OF INDIA

(35)

consideration. When nationalization was taken on a large scale, the income-tax derived would be reduced and an alternative source of income should be found out, and simultaneously private enterprise should not be placed in a position of disadvantage by exempting government undertakings from taxation. To a question by the Premier of Orissa whether the same arguments did not apply to Central Government undertakings the Hon'ble Dr.John Matthai replied that Railways contributed to the general revenues and that the contribution of the railways during the war period was perhaps very nearly the same as a private company would have been required to pay including Excess Profits Tax. He added that the Industrial Finance Corporation, which was a corporation created by a law of the Dominion Legislature was also subject to income tax. The Premier of the United Province said that under the Government of India Act, 1935, only business carried on outside the Province was subject to taxation and that the Provinces did not start industries for earning profits but to meet the vital requirements of the people. The Hon'ble Dr. John Matthai agreed that in the case of public utility undertakings the rate of taxation should be of a concessional character. He also agreed that there should be no differentiation in regard to taxation of Provincial and Central undertakings and that the matter did require further consideration. He thought that some distinction should be made between items (1) to (10) in Explanation (2) to clause (1) ~~1 to 4 in clause ( )~~ of the proposed article which referred to public utility services and the remaining items in that ~~clause~~ Explanation. In regard to public utility services, he thought, that either they might be exempted from taxation or the rates of taxation might have to be specially considered with regard to the circumstances of the undertakings.

(PTO)

NATIONAL ARCHIVES OF INDIA

The Premier of Bihar desired that the fertilizer projects should be classified as public utility services.

The Hon'ble Dr. John Matthai undertook to subject the article to further examination by his Ministry in the light of the above discussions and promised to consider particularly what exactly would be the decision regarding the levy of income tax on public utility concerns, and what was the precise scope of public utility concerns.

He also undertook to examine the question of levying income tax on Provincial or Central public utility undertakings and business undertakings when run by a Provincial Government.

As regards Co-operative concerns the Hon'ble Dr. John Matthai said that in the matter of exemption from income tax there was fundamentally difference as between Co-operative Societies and concerns run by the State.

The Finance Minister of Bombay raised the question of inclusion in the Concurrent List of the entry relating to 'Stock exchanges and futures market and taxes other than stamp duties on transactions therein". The Hon'ble Dr. Ambedkar pointed out that the expert committee strongly felt that the entry should be in the Union List. In any case the Finance Minister agreed to look into this matter also.

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New Delhi,
July 24, 1949.

S.N.MUKERJEE
JOINT SECRETARY.

NATIONAL ARCHIVES OF INDIA

37

APPENDIX 'A'

Restrictions regarding taxes on sale or purchase of goods.

264-A. (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where under the general law relating to sale of goods such sale or purchase:-

(a) takes place outside the State; or

(b) takes place in the course of the import of the goods into the territory of India, or

(c) is the last sale or purchase effected in India with a view to the export of the goods out of the territory of India; or

(d) takes place in the course of inter-State trade or commerce and either with a view to re-sale by the purchaser in the course of his business or with a view to use by the purchaser for the purposes of any manufacturing business or building contract carried on or undertaken by him.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any such goods as may be declared by Parliament by law to be essential for the life of the community or for the purpose of the industrial or economic development of the Union.

NATIONAL ARCHIVES OF INDIA

(38)

APPENDIX 'B'

Exemption from taxation by States in respect of water or electricity in the case of certain authorities.

265A. No law of a State shall impose or authorise the imposition of any tax in respect of any water or electricity stored or generated or consumed or distributed or sold by any authority established by Parliament by law for regulating or developing any inter-State river or river valley save in so far as Parliament may, by law, otherwise provide.

NATIONAL ARCHIVES OF INDIA

(38/1)

APPENDIX 'C'

266(1). Where a trade or business undertaking of any kind is carried on by or on behalf of the Government of a State, that Government shall in respect of each such trade or business undertaking and all operations connected therewith, all property occupied, and all goods owned for the purposes thereof or any income arising in connection therewith, be liable to Union taxation in the same manner and to the same extent as in the like case a Company would be liable, provided that the liability of the Government of the State shall be determined with reference to each such trade or business undertaking separately, without reference to other trades and business undertakings, carried on by the State.

Explanation (1) For the purposes of this article, any operations incidental to the ordinary functions of the Government of a State, such as, the sale of the forest produce of any forest under the control of the Government (without applying thereto any process other than that ordinarily employed by the owner of a forest) or of any article produced in any jail within a State, shall not be deemed to be a trade or business carried on by or on behalf of the Government of the State.

Explanation (2). Operations connected with the following shall not be held to be incidental to the ordinary functions of the Government of a State, namely:-

(a) (Please see the list of
(businesses mentioned in a
(b) (separate statement enclosed
(with this note.
(c) (

(2) Save as hereinbefore provided, the Government of a State shall not be liable to Union taxation in respect of lands or buildings situate within the territory of India, or income accruing, arising or received within such territory.

Provided that nothing in this clause shall exempt the Ruler of any State for the time - being specified in Part III of the First Schedule from any Union tax in respect of lands, building or income, being his personal property or personal income.

NATIONAL ARCHIVES OF INDIA

39

List of businesses profits from which should be liable to income-tax.

(i) Hydro-Electric Undertakings.

(ii) Electric Supply Under-takings.

(iii) Gas Supply Undertakings.

(iv) Transport Undertakings, Minor Railways, Farries, Inland River Navigation (other than National Waterways).

(v) Steel Works, Cement Factories, Fertilizers Factories, Textile Mills, Oil Mills, Flour Mills, Rice Mills, Saw Mills, Soap Factories, Mines and similar Industrial Undertakings.

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NATIONAL ARCHIVES OF INDIA